

PLAINTIFFS'

EXHIBIT

“D”

Document Attached

**Documents which supports
the Plaintiffs' legal Claims**



Office of the Governor
Office of Consumer Affairs

April 20, 1993

Barry W. Reid
ADMINISTRATOR

404-656-3700
FAX: 404-651-9018

Mr. James Bostwick
3136 Desert Drive
Apartment #4
East Point, Georgia 30344

RE: Our Reference File No. 921215-03F-43
Consumer Name: James Bostwick
Business Name: Fidelity Financial Services

Dear Mr. Bostwick:

Thank you for your letter of April 2, 1993 concerning your complaint with the above named business.

After reviewing your letter and other documents it appears at this time that the facts you have alleged require substantiation through other complaints showing a pattern of practice on the part of the business before this office could assist you. We do not have such a pattern of practice from complaints at this time. We will monitor this business's activities and may recontact you at a later date if such a pattern appears.

Since you allege that documents have been falsified or forged you may wish to seek legal advice, since this allegation may be criminal.

Thank you for bringing this matter to our attention.

Sincerely,

Michael A. Kaiser
Investigator

MAK/bdw



3136 Desert Drive, Apt. 4
East Point, GA 30344

April 2, 1993

Office of the Governor
Office of Consumer Affairs
2 Martin Luther King, Jr. Dr.
Plaza Level East
Atlanta, GA 30334-4600

Re: #921215-03F-43
Business: Fidelity Financial Services

Dear Mr. Karsh:

In reply to your correspondence dated March 30, 1993, I wish to state that documents pertaining to the purchase of my car were indeed falsified at Fidelity Financial Services. The falsified documents should already be in the file at your office.

The first act of falsification concerned the changing of the odometer mileage to make it look like the car was new. While Mr. Fleenor stated in his March 26, 1993 letter that the warranty was done by the warranty company, this particular document was actually done by an employee at Fidelity Financial Services. It seems absurd that while the warranty company is located in Texas, Mr. Fleenor wants everyone to believe that the document in question was initiated in that State.

Additional falsification concerns the naming of Auto Analyst as the selling dealer. Auto Analyst is in fact a marketing company which is part of the finance company. If Auto Analyst is the selling dealer, then why was I not asked to take my car there for the numerous needed electrical repairs?

Mr. Fleenor seems to want you to believe that I benefited from the "warranty". In the first place I did not even want a warranty. I was made to feel that if I didn't take the warranty, then the car could not have been financed. If I had wanted a warranty, I would have wanted one issued by the Ford Motor Company. Secondly, none of the electrical problems were ever corrected, even though there was this great "warranty". Finally, had I been issued a used car warranty, the cost of that warranty would have decreased the amount of money that has to be repaid to the finance company. The cost of the non-existent "new car warranty" was added to the amount of money that had to be financed. As I said in an earlier letter, I am still paying for a useless warranty.

In the copy of the letter forwarded to your office by Mr. Brian Bakst, which, incidentally, I don't believe was ever forwarded to my home, the writer refers to me as one of the "financially substandard clients". If I am so "substandard," then why has Fidelity Financial Services received all monthly payments in much more than a timely manner?

The letter head itself reveals that Auto Analyst is part of the finance company. Because of what appears to be so obvious, I cannot believe that any business can be allowed to continue such gross misrepresentation. Mr. Bakst states how proud he is



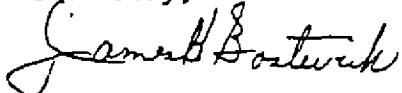
Letter to Mr. Karsh (Cont'd)
April 2, 1993

-2-

of Auto Analyst's record with the Better Business Bureau and the State Department of Consumer Affairs. In a conversation with personnel at the BBB just prior to the filing of my complaint, I do believe that I was told that Auto Analyst is not listed with that organization.

I would like for both Auto Analyst and Financial Services management level personnel to know that despite their arrogant and insulting literary tones, I will continue to pursue this issue because some serious and illegal acts have occurred.

Sincerely,



James H. Bostwick

3136 Desert Ave, Apt. 4
East Point, GA 30344

November 15, 1992

First Extended Service Corporation
13601 Preston Road, Suite 501
East Dallas, Texas 75240

Re: NE4-GM1-301234

Sir:

Over the past several months I have come to realize that the Extended Service Warranty on my car is worthless. I have reached this conclusion not only because each time there is a problem I am sent to a gas station for repairs as opposed to a dealer, but also because I am frequently told that things that are covered under the terms of the warranty are not. Consequently I have had to pay for all repairs.

When my car breaks down it is supposed to be repaired by the selling dealer, which is Neal Pope Ford. Yet I am forced to call Auto Analyst which, in fact, is not a dealer but an extension of Fidelity Financial Services.

Since purchasing the vehicle I have been plagued with numerous electrical problems. I have had to replace four Halogen headlamp bulbs on the right, and this has been an expense within itself. I might add here that the most recent burnout of the headlamp bulb in that area endangered my life, as wires were burned underneath the hood. A similar incident occurred with the third brake light that is located in the rear window. The wires were burning and they had to be disconnected in order to stop the fire. In addition to these problems, I have had to watch the coolant light and the brake light come on all too often; I have been bothered with a horn that blows only when it wants to; and I have had to watch the light from the radio go on and off. It seems to me that with all of these electrical problems, it should be quite lucid that something is wrong with the wiring.

Besides the problems that I've already mentioned, less than six months after I bought the car, a major defect was found with the Air Conditioning System. The repair cost was over \$300, and the only way that I avoided paying the money was because the dealer did not phone me prior to making the repairs.

NOV 18 1992

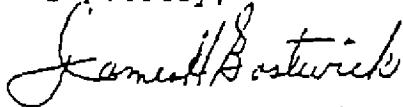
-2-

To First Extended Service Corporation (Cont'd)
November 15, 1992

The electrical problems still exist, and I plan to have the wiring repaired. However, I do not intend to take my car to one of the gas stations that Auto Analyst has referred me to in the past. The car needs to go to a Ford Dealer, and that's where it's going.

Because I have had to pay out so much money for repairs, and because I must pay out more, I am requesting that the Extended Service Warranty be cancelled, and that the money due me be refunded, as it is not my nature to pay for something that I am obviously not getting.

Sincerely,



James H. Bostwick

NOV 18 1992

3136 Desert Drive, Apt. 4
East Point, GA 30344

November 26, 1992

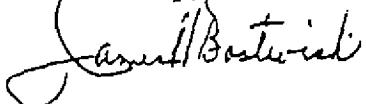
Auto Analyst
3845 North Druid Hills Road, #101
Decatur, GA 30033

Sir or Madam:

Enclosed is a copy of a letter that I mailed to First Extended Service Corporation requesting cancellation of the Extended Service Agreement. Their response is also enclosed.

The reasons for this request are outlined in that letter; therefore, I do not feel the need to write you another. Regardless of the steps necessary for me to take in order to cancel the agreement, I am willing to take each one, as I have numerous concerns regarding the legitimacy of the entire agreement.

Sincerely,



James H. Bostwick

1/15/94-0023

CONSUMER REPORT

DATE: 4.19.94NAME: Anthony FountainTELEPHONE NO. 404.908.9866 +CITY: Atlanta, GA717-6677 +403-6352 Pn

The subject of this report is

PLAINTIFF'S
EXHIBIT
4LLOAN COMPANY NAME: Fidelity FinancialADDRESS: 3845 N. DeKalb Hills Rd. Ste. 104CITY: Decatur, GA TELEPHONE NO. 404.321.3373

Describe fully, using dates and location whenever possible the events leading up to filing this report (#5120372) Anthony Fountain

Made Sales Finance loan on 4-28-93, Terms 12 months.
 At \$161.82. Amt \$400. Total \$6796.44.
 Paid off 9-16-93. Payoff was approximately \$5800.-
 He made 4 payments and payoff was still \$5800.-
 Ken Johnson told him when he made loan that he would
 be charged \$400. if paid within 4 months. Is this
 payment toward payoff?

How resolved Tony O'Ballie, Administration Specialist

4.19.94 phoned Marty Lane, Mgr. Advised him (complaint)
 Received loan to figure proper charges and Refunds.

Finance charges \$2396.44 - when paid off 9-16-93

Refunds \$932.84 Finance charges $\frac{1}{2}$ Finance charge. Payoff \$5410

^{16/10}
^{16/10} correct payoff Finance - Prepaid Penalty in contract
 $\frac{1}{2}$ Refund \$783 Refund - 01-10/93

4.19.94 phoned Mr. Fountain. Advised him of contract & Refunds are
 correct. 7/13

11-94.0019

CONSUMER REPORT

DATE: 3-29-94NAME: Eric GreaserTELEPHONE NO. 404.344.2148CITY: Atlanta, GA

The subject of this report is

LOAN COMPANY NAME. Fidelity FinancialADDRESS: 3845 N. Piedmont Rd. Ste 100CITY. Decatur, GA TELEPHONE NO. 404.321.3373

Describe fully, using dates and location whenever possible the events leading up to filing this report

Financed an automobile from Nalley's in 1991 -
Automobile Insurance through outside Agency (apsed
Feb 28, 1993 thru March 3, 1993). So forced place
Auto insurance as loan in the amt of \$420.00 payed
loan off March 1, 1994. Branch is saying he owes
\$420.00 for ins. coverage & wait release title.

Now resolved Terry D. Butts, Admin. State Special
 3-29-94 Talked to Ms. Johnson, AMer, she advised he was on ASH and
 it expired and payed thru 3-1-94. Balance on loan is \$429.47. On
 May 3, 1993, he was charged an loan for \$440.55 on Sept 3, 1993
 Behind was \$220.52. They have contacted HO to try to
 correct will advise me 3-29-94 Mility Corp phone.
 He advised that he is checking on through HO & w.i.l. Advisor
 3-30-94 TDS ³⁻³⁰⁻⁹⁴ ^{\$295.00} refund will be \$25.00 back on 5/1/94
^{Mar 1st paid} ^{\$134.61} ^{1/34.61} - Account Life, Reimbursement

PLAINTIFFS'

EXHIBIT

“E”

Document Attached

**Documents which supports
the Plaintiffs' legal Claims**

SCOTT BLVD. MOTORS INC.
1670 Scott Blvd • Decatur, Georgia 30033
(404) 633-9656

MOTOR VEHICLE PURCHASE
AGREEMENT / BILL OF SALE

Sold To	S. S. #:	
FIDELITY FIN. SERVICES		
City/State/Zip	County of Residence	
DECATUR, GA 30033	DEKalB	
DESCRIPTION OF PURCHASE		
Year	Make	Model
89	PLYMOUTH	ACCLAIM
Body Type	Color	Mileage
4 DR	BLUE	97081
Vehicle ID or Serial No		
1E3BA4AF8KF488889		
License or Title No	Lienholder's Name	
AMN-776		
Lienholder's Address		

Street	3845 NORTH DULUTH HILLS ROAD	
Phone	Salesperson	Date
	ED	10/28/94
DESCRIPTION OF TRADE-IN		
Year	Make	Model
Body Type	Color	Mileage
Vehicle ID or Serial No		
License or Title No	Lienholder's Name	
Lienholder's Address		

WARRANTY AND AGREEMENT

SOLD AS IS I hereby make this purchase knowingly without any guarantee expressed or implied, by this dealer or his agent

() Buyer's Initials (if applicable)

NOTICE THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT INFORMATION ON THE WINDOW OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE

Buyer acknowledges that this agreement includes all of the terms and conditions pertaining to this purchase on both the face and reverse side, and no other agreement or promise of any kind (verbal or written) will be recognized. Upon failure or refusal of the buyer to complete this agreement, all or part of the cash deposit may be retained as liquidated damages. The buyer certifies he/she is of legal age and acknowledges herewith receipt of a copy of this agreement. Not valid unless accepted by Authorized Representatives

Buyer's Agreement

Buyer agrees to buy tag & pay advalorem taxes on purchased vehicle. Scott Blvd Motors Inc may obtain tag, if necessary but buyer agrees to pay for same, plus \$25.00 service fee

ODOMETER DISCLOSURE STATEMENT

Federal law (and state law if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I **STATE** _____

state that the odometer (of the vehicle described below) now reads _____ (No Tents) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below unless one of the following statements is checked

(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits

(2) I hereby certify that the odometer reading is NOT the actual mileage. **WARNING—ODOMETER DISCREPANCY**

PURCHASE

Make	Body Type	Model
PLYMOUTH	4 DR	ACCLAIM
Vehicle ID Number	Stock Number	
1E3BA4AF8KF488889	4691	
Color	Trim	Year
BLUE		91
Transferor's PRINTED Name (Seller)		
Scott Blvd Motors, Inc.		
Transferor's Street Address		
1670 Scott Blvd.		
City	State	Zip
Decatur	GA	30033

TRADE-IN

Total Price	695.00
Net Trade-in Allowance	0.00
Balance	695.00
Sales Tax	0.00
	0.00
Total	695.00
Deposit (Rec. No.)	
Cash on Delivery	695.00
Balance Due	0.00

X Buyers Signature

X Salesperson

X Dealer Acceptance

ODOMETER DISCLOSURE STATEMENT

Federal law (and state law if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I **STATE** _____

state that the odometer (of the vehicle described below) now reads _____ (No Tents) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below unless one of the following statements is checked

(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits

(2) I hereby certify that the odometer reading is NOT the actual mileage. **WARNING—ODOMETER DISCREPANCY**

TRADE-IN

Make	Body Type	Model
Vehicle ID Number	Stock Number	
Color	Trim	Year
Transferor's PRINTED Name (Seller)		
Transferor's Street Address		
City	State	Zip

PLAINTIFF EXHIBIT

E

FIDELITY FINANCIAL
SERVICES

CHECK NUMBER
581820762

PAY TO THE ORDER OF	DATE	CHECK AMOUNT
<input type="text" value="SCOTT BLVD MOTORS INC"/>	* 10/24/94	<input type="text" value="\$693.00**"/>
FOR	NOT VALID OVER \$15,000 WITHOUT TWO SIGNATURES NORTHWEST BANK RED WING MN RED WING MN 55068	
REFUND FOR AUTO TONY WARE PER RON	 BY _____ AUTHORIZED SIGNATURE	
BY _____		AUTHORIZED SIGNATURE

5818207620010919004650

2366700



SCOTT BLVD MOTORS, INC.
1670 SCOTT BLVD
DECATUR GEORGIA 30033
(404) 633 9656

53747

DATE 10-28-94

19

RECEIVED FROM

Facility Financial Services

\$693.00

DOLLARS

FOR

41691

AMOUNT OF ACCOUNT		
THIS PAYMENT	693.00	
BALANCE DUE		

CASH
 CHECK
 M.O.

BY 
581825762

Thank You

1 IN THE SUPERIOR COURT OF FULTON COUNTY
2

3 STATE OF GEORGIA
4

5 TONY L. WARE
6

7 PETITIONER,
8

9 VS
10

11 AMVIVA UPTIME SERVICE, CO.
12

13 Respondent.
14

15 CIVIL ACTION
16

17 FILE NUMBER 877150
18

19 FILED IN OFFICE
20

21 NOV - 1 1994
22

23 DEPUTY CLERK SUPERIOR COURT
24 FULTON COUNTY, GA

25 AN ORDER

26 To any State Police Officer, Sheriff, Sheriff Deputy, Constable, Marshal,
27 Sheriff's Deputy, County or City Police Officers. GREETING

28 You are hereby commanded to assist the Petitioner, Tony L. Ware in the
above-captioned civil action by allowing said petitioner or his agent to take into
possession of his said vehicle Tag Number beingin AMN776 Blue Plymouth Acclaim 4
Door I. D. LP3BA46K8KF468829 which may be located at Scott Boulevard Motors, 1660 or
1640 Scott Boulevard, Decatur, Georgia 30033 or wherever said vehicle can be found
and any violation of this order by any officer or person shall be in contempt of
this Court pursuant to Georgia Law Title 15 O.C.G.A. Code §15-1-1(a).

29 IT IS FURTHER ORDERED, That you are also commanded to file a notice with
this Court that such order by this Court has been carry out and that Petitioner,
Tony L. Ware be allowed to make certified copies of this order without cost.

30 IT IS SO ORDERED, This The 1st Day Of Nov 1994
31 1994

32 Lester Glavin
33 JUDGE OF SUPERIOR COURT
34 SUPERIOR COURT OF FULTON COUNTY

35 Prepared and Presented By:
36

37 Tony L. Ware, PETITIONER
38

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

TONY L. WARE

Petitioner,

VS.

AMERICAN LENDER SERVICE, CO

Respondent.

CIVIL ACTION

E 2 9 1 5 9

FILE NUMBER:

FILED IN OFFICE

AUG 25 1994

DEPUTY CLERK, SUPERIOR COURT

FULTON COUNTY GA

JUDGMENT and ORDER

This action having become in default on July 9th, 1994 by failure of the respondent to file its answer or other defensive pleading, and fifteen (15) days having elapsed from the date of the default and the default not having been opened as a matter of right or by order of the Court, and the issue of damages having tried before the Court without a jury and a decision having been rendered by this Court for the petitioner and against respondent and its principal by granting petitioner petition as prayed for by ordering the immediate release of petitioner vehicle tag being AMN776 Blue Plymouth Acclaim 4 Door I.D. Number LP3BA46K8KF488829 pursuant to Georgia Law Title 9 Code §9-11-55(a).

IT IS FURTHER ORDERED, That a new Certificate of Title be issued to said Tony L. Ware, Petitioner without any liens on said vehicle and that old title is declared null, void and having no effect.

IT IS SO ORDERED AND ADJUDGED, That petitioner vehicle be released immediately into the hands of Tony L. Ware, Petitioner or his agents, and that a certificate of title also be issued immediately.

PLAINTIFF'S
EXHIBIT
C

BOOK PAGE
03073 - 137

1
2 This The 25 Day Of Aug, 1994.
3
4

5 Patricia Blawie
6
7

JUDGE OF SUPERIOR COURT
SUPERIOR COURT OF FULTON COUNTY
8
9

10 Prepared and presented by:
11

12 Tony L. Ware
13

14 Tony L. Ware, Petitioner & Claimant
15
16

17 1479 Mhoury Avenue, S.W.
18 Suite 227
19 Atlanta, Georgia 30315-3546
20
21

22 (404)622-1594
23
24

25
26
27
28

BOOK PAGE
03073 - 120

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

193.

COUNTY OF FULTON

VERIFICATION

PERSONALLY APPEARED before me, the undersigned attesting officer
duly authorized by law to administer oaths is, **DR. TONY L. WARE**, Chairman &
CEO of **T.L. WARE BOTTLING COMPANY, INC.**, in the above-styled action
after being duly sworn in deposes and states under oath the following

1 That I am Plaintiff **TONY L. WARE**, Chairman & CEO of **T.L. WARE BOTTLING COMPANY, INC.**, also known as the Plaintiff in this action and that I hereby further state that I am over the age of the legal majority in the United States and is competent to give this affidavit on behalf of myself and my Corporation

2 That I further certify that all allegations made in the Complaint for Damages and the Exhibits attached thereto are deemed true and correct to the best of my personal knowledge, information and belief

1 **IN WITNESS AND TESTIMONY HEREOF**, This affidavit is made under
2 oath and is true and correct to the best of my personal knowledge, information and
3 belief. Further Affiant say not

4 This the 01 day of December, 2004.

5 **Respectfully Submitted,**

6 

7 **Dr. Tony L. Ware, Affiant**

8 **Sworn to and Subscribed before Me,**

9 This the 01 day of DEC, 2004.

10 

11 **STATE NOTARY PUBLIC OFFICE**

12 MICHAEL P. JOHNSON, SP
13 Notary Public, State of North Carolina
14 My Commission Expires, Dec. 29, 2005

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

**TONY L. WARE, CEO and
T. L. WARE BOTTLING CO., INC.**

Plaintiffs,

vs.

CIVIL ACTION FILE NUMBER:

**FLEETBOSTON FINANCIAL CORP.
F/K/A BANKBOSTON CORP.**

2004094553

Defendant.

) DEMAND FOR TRIAL BY JURY

PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS

COMES NOW- TONY L. WARE, CEO and T.L. WARE BOTTLING

COMPANY, INC., the Plaintiffs in the above-styled civil matter proceeding

ELEPBOSTON FINANCIAL CORP Defendant is required to answer, object,

or deny said admissions and file its responses with the Court not more than (45) days after service of the Summons and Complaint thereof as required by O.C.G.A. § 9-11.

36(a) If Defendant's responses, answers or objections are not filed with the Court within 45 days after service upon the Defendant, then Defendant will have admitted and made the following admissions to wit:

1 The Defendant FLEETBOSTON FINANCIAL CORP , admits that it have
been properly serve with process of Summons and Complaint and further states that
Cathy Cox and her agents is the Defendant's Agent for service of process and all
other services and notices in the above-styled civil action

1 2 The Defendant FLEETBOSTION FINANCIAL CORP , admits that it has
2 committed all acts stated in the Plaintiffs' Complaint and that all exhibits attached
thereto are also admitted as true

3 3 The Defendant FLEETBOSTION FINANCIAL CORP , admits to the Court or
4 the Jury that the Plaintiffs is entitled to the statutory damages of not less then the
5 amount and sum stated in the Plaintiffs' Complaint and further waives all other
6 defects in this civil action

7 4 The Defendant FLEETBOSTION FINANCIAL CORP , admits to the Court or
8 the Jury that the Plaintiffs are entitled to statutory property damages in the Complaint
not less than the amount of **\$75,507,000.00** [Seventy-five Million Five Hundred and
9 Seven Thousand Dollars] and further waives all other defects and objections to the
10 contrary in this civil action

11 5 The Defendant FLEETBOSTION FINANCIAL CORP , admits to the Court or
12 the Jury that the Plaintiffs are entitled to punitive damages of not less than the
13 amount of **\$95,000,000.00** [Ninety-five Million Dollars] and further waives all other
defects and objections to the contrary in this civil action

14 6 The Defendant FLEETBOSTION FINANCIAL CORP , admits to the Court or
15 the Jury that Plaintiff is entitled to pre interest judgment from June 4th, 1994 until the
date final judgment is entered and further waives all other defects and objections to
the contrary in this civil action

17 7 The Defendant FLEETBOSTION FINANCIAL CORP , admits that these
18 admissions shall be govern by the holdings in G.H. Bass & Co., v. Fulton County
Board of Tax Assessors, 268 Ga. 327, 486 (2000) **SE2d** 810 (1997) and Solis v.
Lamb, 244 Ga App 8, 534 **SE2d** 582 (2000)

21 8 The Defendant FLEETBOSTION FINANCIAL CORP , admits that the
Plaintiffs' Complaint for damages states a legal claim to which relief can be granted
22 by the Court and that a motion to dismiss such Complaint or to set aside any final
23 judgment under O C G A § 9-11-60(d) based upon such grounds would be without
merit by the Defendant Therefore, the Complaint states a legal claim for relief and is
24 deemed true and correct without any objections made by the Defendant

9 The Defendant FLEETBOSTON FINANCIAL CORP , admits that there are no genuine issues as to any material facts as to liability and damages and that the Plaintiffs are entitled judgment to a Summary Judgment on the issue of liability and damages as a matter of law and waives any defects or objections to the contrary

10 The Defendant FLEETBOSTON FINANCIAL CORP admits to the Court or the jury that no other testimony, affidavits, evidence which is contrary to these admissions shall not supersede these admissions during any hearing or trial and either before and after entry of any verdict or final judgment

11 The Defendant FLEETBOSTON FINANCIAL CORP., admits that any amendments or withdrawal of these admissions by the Court or by the Defendant concerning the matters admitted would cause the Plaintiffs an undue burden and would be prejudice to them and the case will not be best served

WHEREFORE, The Plaintiffs prays and demand that the Defendant in this action answer, object or deny the forgoing admissions within (45) days from the date of service with the Summons and Complaint or said admissions will be taken as true by the Defendant by the operation of law

This 01 day of December, 2004.

Respectfully Submitted,

**Michael R. Johnson, Sr.
Attorneys for the Plaintiff
Georgia Bar No. 395056**

Respectfully Submitted,

**Dr. Tony L. Ware, Chairman & CEO
Plaintiff, Pro Se**

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

FILED IN OFFICE
JAN 14 2005
DEPUTY CLERK, SUPERIOR COURT
FULTON COUNTY, GA

**TONY L. WARE, CEO and
T. L. WARE BOTTLING CO., INC.,**
Plaintiffs,
vs.
**FLEETBOSTON FINANCIAL CORP.
F/K/A BANKBOSTON CORP.**
Defendant.

AFFIDAVIT OF SERVICE OF PROCESS

COMES NOW, TONY L. WARE, Plaintiff in the above-styled civil action and files this AFFIDAVIT OF SERVICE OF PROCESS on behalf of the Plaintiffs concerning the Defendant **FLEETBOSTON FINANCIAL CORPORATION** f/k/a **BANKBOSTON CORPORATION** pursuant O.C.G.A. § 14-2-1520(c) by stating the following under oath to wit.

1 That I am **TONY L. WARE, CEO**, Plaintiff of the Plaintiff **T.L. WARE**
BOTTLING COMPANY, INC., and that I do certify under oath that I have
personally served the above-named Defendant on **December 10TH, 2004** with a
copy of the Summons, Complaint and Plaintiffs' Request for Admissions by serving
Defendant's last known CEO at the following address to wit.

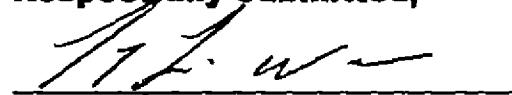
**M. A. FERRUCCI, President & CEO
FLEETBOSTON FINANCIAL CORPORATION
50 Kennedy Plaza, 16th, Floor
Providence, RI 02903**

See, Exhibit "A" attached hereto

1 **IN WITNESS AND TESTIMONY HEREOF, This AFFIDAVIT OF**
2 SERVICE is made under oath and is true and correct and is further made upon my
3 personal knowledge, information and belief. Further Affiant say Not.

4 On this 23rd, day of Dec, 2004.

5 **Respectfully Submitted,**

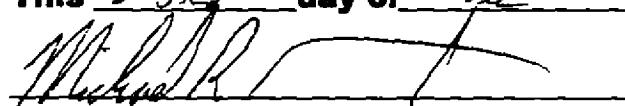
6 
7 **Tony L. Ware, CEO & Plaintiff**

8 **Plaintiff's Address:**

9 **TONY L. WARE, Chairman & CEO**
10 **T.L. WARE BOTTLING COMPANY, INC.**
11 **P.O. BOX 150524-DEPT. 0227**
12 **ATLANTA, GEORGIA 30315-0188**
13 **(404) 945-0342**

14 **Sworn to and Subscribed before Me,**

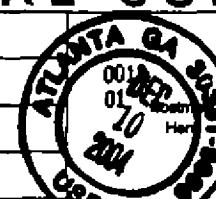
15 This 23rd day of Dec, 2004.

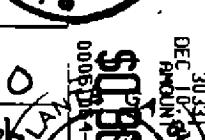
16 
STATE NOTARY PUBLIC OFFICER

17 MICHAEL R. JOHNSON, SR
18 Notary Public DaKai, GA
19 My Commission Expires April 29, 2005

20 **My Commission Expire On.**

Exhibit "A"

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only: No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
PROVIDENCE, RI 02803	
Postage	\$3.85
Certified Fee	\$2.30
Return Receipt Fee (Endorsement Required)	\$1.75
Restricted Delivery Fee (Endorsement Required)	\$3.50
Total Postage & Fees	\$ 11.40
 ATLANTA GA 10/10/04 USPS ATLANTA GA	
Send To Mr. M.A. Ferrucci, CEO Street, Apt No. or PO Box No. City State Zip 50 Kennedy Plaza, 16th Fl Providence, RI 02903	

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE—POSTMASTER			
Received From		 	
<p>TONY L. WARG P.O. Box 150524 ATLANTA, GA 30315</p>			
<p>One piece of ordinary mail addressed to</p> <p>Mr. M.A. Ferruccio, CEO 50 Kennedy Plaza, 16th Providence, RI 02903</p> <p>   </p>			
<p>U.S. POSTAGE PAID ATLANTA, GA DEC 10 1989 AMERICAN AIRLINES AIRPORT</p>			

T. L. WARE BOTTLING COMPANY, INC.

VIA - U.S. CERTIFIED MAIL

December 10th, 2004

Mr M A Ferrucci, CEO
FleetBoston Financial Corporation
50 Kennedy Plaza, 16th, Floor
Providence, RI 02903

Reference: Summons and Complaint.

Dear Mr Ferrucci

This letter is also in reference to our legal claims we have against your company. Enclosed you will find copies of the Summons, Complaint and Request for Admission concerning a lawsuit we filed against your Company in the Superior Court of Fulton County in the State of Georgia which require an answers by FleetBoston Financial Corporation

Thank you for your time concerning our claims

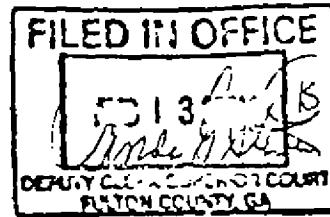
Respectfully yours,
T L Ware
T L Ware Bottling Company, Inc.

TLW
Dr Tony L Ware, PhD,JD
Chairman and CEO

TLW/lw

cc Michael R Johnson, Esq

Enclosure



IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

Petitioner.) CIVIL ACTION NO
)
HARRY J. MATHIS)
)

ORDER

The Petition for Appointment of HARRY J. MATHIS,
for Permanent Process Server having been read and considered,
IT IS HEREBY ORDERED That HARRY J. MATHIS,
Shall be, and hereby is, Appointed Permanent Process Server for
Matters pertaining to this Court

This 2nd day of August 2001


CHIEF JUDGE, ELIZABETH E. LONG
Fulton County Superior Court
Atlanta Judicial Circuit

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

**TONY L. WARE, CEO and
T. L. WARE BOTTLING CO., INC.,**

Plaintiffs,

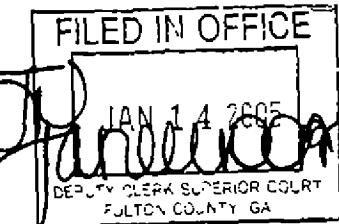
vs.

**FLEETBOSTON FINANCIAL CORP.
F/K/A BANKBOSTON CORP.**

Defendant.

)
)
)
)
)
)
)
)
)

) CIVIL ACTION
)
)
)
)
)



RETURN OF SERVICE OF PROCESS

COMES NOW, HARRY J. MATHIS, Court Appointed Process Server in the above-styled civil action and files this RETURN OF SERVICE OF PROCESS on the above-named Defendant **FLEETBOSTON FINANCIAL CORPORATION** f/k/a **BANKBOSTON CORPORATION** within the statute of limitation and pursuant to the law of this State under O C G A § 14-2-1520(c) by stating the following under oath to wit

1 That I am **HARRY J. MATHIS** and that I do certify under oath that I have personally served the above-named Defendant on **December 10th, 2004** with the Summons, Complaint and Plaintiffs' Request for Admissions by serving the Georgia Secretary of State at the following address to wit

**FLEETBOSTON FINANCIAL CORPORATION f/k/a
BANKBOSTON CORPORATION
c/o Cathy Cox, Georgia Secretary of State
2 Martin Luther King Jr., Drive, N.E., Suite 315
ATLANTA, GEORGIA 30334**

IN WITNESS AND TESTIMONY HEREOF, This RETRUN OF SERVICE is made under oath and is true and correct and is further made upon my personal knowledge, information and belief Further Affiant say Not

On this 29th, day of December, 2004.

Respectfully Submitted,

Harry J. Mathis
Harry J. Mathis, Process Server

Process Server's Address:

HARRY J. MATHIS
5490 Hunters Forest Lane
COLLEGE PARK, GEORGIA 30349

Sworn to and Subscribed before Me,
This 29th day of December, 2004.

Sylvia R. Harrison
STATE NOTARY PUBLIC OFFICER
SYLVIA R. HARRISON
Notary Public, Clayton County, Georgia
My Commission Expires March 19, 2007

My Commission Expire On.

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

3
4 **TONY L. WARE, CEO and**)
5 **T. L. WARE BOTTLING CO., INC.,**)
6 **Plaintiffs,**)
7 **vs.**) **CIVIL ACTION**
8 **FLEETBOSTON FINANCIAL CORP.**) **FILE NUMBER: 2004CV94553**
9 **F/K/A BANKBOSTON CORP.**) **AFFIDAVIT OF PRE INTEREST**
10 **Defendant.**)

JAN 25 2005
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

STATE OF GEORGIA)
) 55

13 | COUNTY OF FULTON)

AFFIDAVIT OF PRE JUDGMENT INTEREST

15 **PERSONALLY APPEARED** before me, the undersigned attesting officer
16 duly authorized by law to administer oaths is, **DR. TONY L. WARE, CEO** Plaintiff
17 of **T.L. WARE BOTTLING COMPANY, INC.**, in the above-styled action after
18 being duly sworn in deposes and states under oath the following

-1-

That I am **DR. TONY L. WARE, CEO** and that I am over the age of the legal
majority and is competent to give this affidavit I further state that all statements
made in this affidavit are made on my personal knowledge, information and belief

-2-

23 I am qualified as an expert witness to give this affidavit concerning the amount
24 of Pre Judgment Interest and that I also have a PhD and a MBA in business
25 Administration and that I will give testimony as it relates to the pre judgment interest
that have accrued on **\$226,521,000 00** from June 4th, 1994 until January 4th, 2005

1 -3-

2 That pursuant to O C G A § 51-12-14(c) pre judgment interest is given to a
3 Plaintiff at the prime interest rate published by the STATISICAL RELEASE H 15
4 Board of Governors of the Federal Reserve Systems a/k/a the Federal Reserve Bank
5 at the time a Plaintiff makes a unliquidated demand concerning any legal claims

6 -4-

7 As of June 4th, 1994 the Prime Interest Rate published by the STATISICAL
8 RELEASE H 15 Board of Governors of the Federal Reserve Systems a/k/a the
9 Federal Reserve Bank at the time the Plaintiffs made their demand was at the legal
10 rate of 7 25% See, Exhibit "A" attached hereto Pursuant to O C G A § 51-12-
11 14(c) 3% is also add to the prime interest rate, which makes the total pre judgment
12 interest for the Plaintiffs in this action is 10 25%

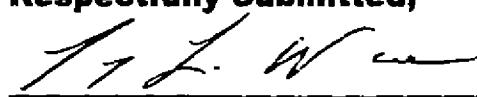
13 -5-

14 I have calculated the interest on \$226,521,000.00 at the rate of 10 25% for
15 6 years that is to say (from June 4th, 1994 to January 4th, 2005) which leads to a
16 total amount of Pre Judgment Interest of \$410,746.265.24.

17 **IN WITNESS AND TESTIMONY HEREOF,** This affidavit is made under
18 oath and is true and correct and is further made on my personal knowledge.
19 information and belief Further Affiant sayeth not

20 This 25th day of Jan , 2005.

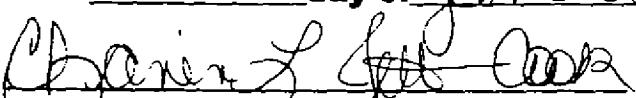
21 **Respectfully Submitted,**

22 

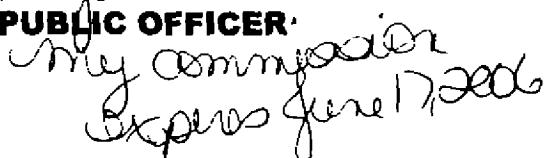
23 **Dr. Tony L. Ware, CEO, Affiant**

24 **Sworn to and Subscribed before Me,**

25 This 25 day of January , 2005.

26 

27 **STATE NOTARY PUBLIC OFFICER'**

28 
My commission
Expires June 17, 2006

STATISICAL RELEASE H. 15

Pursuant to O.C.G.A. § 51-12-14(c)

Prime Interest Rates from Jan 1994 to Dec 2004

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Jan	6.00%	8.50%	8.50%	8.25%	8.50%	7.75%	8.50%	9.50%	4.75%	4.25%	4.00%
Feb	6.00%	9.00%	8.25%	8.25%	8.50%	7.75%	8.50%	8.50%	4.75%	4.25%	4.00%
Mar	6.00%	9.00%	8.25%	8.25%	8.50%	7.75%	8.75%	8.50%	4.75%	4.25%	4.00%
Apr	6.25%	9.00%	8.25%	8.50%	8.50%	7.75%	9.00%	8.00%	4.75%	4.25%	4.00%
May	6.75%	9.00%	8.25%	8.50%	8.50%	7.75%	9.00%	7.50%	4.75%	4.25%	4.00%
Jun	7.25%	9.00%	8.25%	8.50%	8.50%	7.75%	9.50%	7.00%	4.75%	4.25%	4.00%
Jul	7.25%	9.00%	8.25%	8.50%	8.50%	8.00%	9.50%	6.75%	4.75%	4.00%	4.25%
Aug	7.25%	8.75%	8.25%	8.50%	8.50%	8.00%	9.50%	6.75%	4.75%	4.00%	4.50%
Sep	7.75%	8.75%	8.25%	8.50%	8.50%	8.25%	9.50%	6.50%	4.75%	4.00%	4.75%
Oct	7.75%	8.75%	8.25%	8.50%	8.25%	8.25%	9.50%	6.00%	4.75%	4.00%	4.75%
Nov	7.75%	8.75%	8.25%	8.50%	8.00%	8.25%	9.50%	5.50%	4.75%	4.00%	5.00%
Dec	8.50%	8.75%	8.25%	8.50%	7.75%	8.50%	9.50%	5.00%	4.25%	4.00%	5.00%

According to the

**Board of Governors of the Federal Reserve Systems
f/k/a the Federal Reserve Bank**

© Copyright 2004 by T.L. Ware Bottling Company, Inc.

EXHIBIT “A”

1 **IN THE SUPERIOR COURT OF FULTON COUNTY**

2 **STATE OF GEORGIA**

3)
4 **TONY L. WARE, CEO and**

5 **T. L. WARE BOTTLING CO., INC.,**

6 **Plaintiffs,**

7 **vs.**

8 **FLEETBOSTON FINANCIAL CORP.**

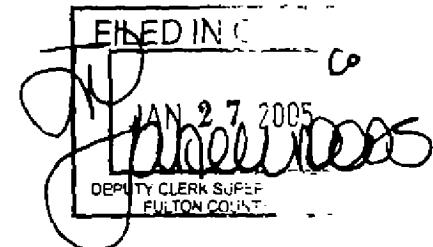
9 **F/K/A BANKBOSTON CORP.**

10 **Defendant.**

) **CIVIL ACTION**

) **FILE NUMBER: 2004CV94553**

) **CERTIFICATE OF DEFAULT**



11 **CERTIFICATE OF DEFAULT**

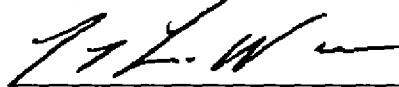
12 **COMES NOW, TONY L. WARE, Plaintiff of T.L. WARE BOTTLING**
13 **COMPANY, INC., Plaintiff also on its behalf pursuant to the Uniform Superior**
14 **Court Rules, Rule 15 and certify under oath the following matters**

15 1 That upon review of the record in the above-styled civil matter there has
16 been no defensive pleadings or answer filed in response to the Plaintiff's
17 Complaint for Damages after proper service of process on the Defendant
18 2 That the Defendant was properly served on December 10th, 2004 by Harry
19 J Mathis a Court Appointed Process Server
20 3 That the Defendant is in default and (15) days having passed since the day
21 of Defendant's default
22 4 That the parties Plaintiffs has or will agree to the entry of a consent Final
23 Judgment and Decree in the above-styled civil action

24 **IN WITNESS AND TESTIMONY HEREOF,** This affidavit is made under
25 oath and is true and correct and is further made on my personal knowledge,
information and belief. Further Affiant sayeth not

1 This 26th day of Jan , 2005.

2 **Respectfully Submitted,**

3 

4 **Dr. Tony L. Ware, CEO, Affiant**

5 **Sworn to and Subscribed before Me,**

6 This 26th day of January , 2005.

7 

8 **STATE NOTARY PUBLIC OFFICER**

9 MICHAEL R. [unclear]
10 Notary Public
11 My Commission Expires: 02/28/2008

12

13

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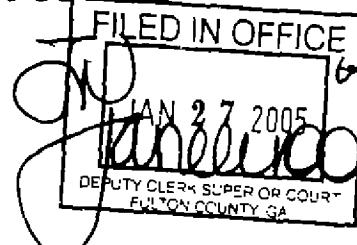
24

25

1 **IN THE SUPERIOR COURT OF FULTON COUNTY**

2 **STATE OF GEORGIA**

3
4 **TONY L. WARE, CEO and**)
5 **T. L. WARE BOTTLING CO., INC.,**)
6 **Plaintiffs,**)
7 **vs.**) **CIVIL ACTION**
8 **FLEETBOSTON FINANCIAL CORP.**)
9 **F/K/A BANKBOSTON CORP.**) **MOTION FOR DEFAULT JUDGMENT**
10 **Defendant.**)
11) **ADMISSIONS FILED IN SUPPORT**



12 **MOTION FOR DEFAULT JUDGMENT AND**
13 **SUMMARY JUDGMENT**

14 **COMES NOW, TONY L. WARE, CEO and T.L. WARE BOTTLING**
15 **COMPANY, INC.,** the Plaintiffs and files their Joint Motion for Default Judgment
16 pursuant to O.C.G.A. § 9-11-55(a) and for Summary Judgment on the issue of
17 damages pursuant to O.C.G.A. § 9-11-56(a) against the above-named Defendant
18 **FLEETBOSTON FINANCIAL CORPORATION.** Based upon the record in this
19 action, the Defendant's admissions and applicable State, the Plaintiffs is entitled to
judgment as a matter of law. The Plaintiffs shows the Court the following

20 **I. STATEMENT OF FACTS**

21 The Plaintiffs Tony L. Ware, CEO and T.L. Ware Bottling Company, Inc.,
22 brought this civil action on December 7th, 2004 based upon their ten count Complaint
23 for Damages, Injunction, RICO violations, Fraud, Gross Negligence and other
24 violations of both Federal and State laws and further requesting injunctive and other
25 equitable relief concerning all other claims and disputes against the Defendant
FleetBoston Financial Corporation f/k/a/ BankBoston Corporation

1 Defendant FleetBoston is a foreign corporation having withdrawn from doing
2 business in this State pursuant to O C G A § 14-2-1520(b) After proper service of
3 process of the Summons, Complaint and Request for Admissions on the Defendant
4 on December 10th 2004 by Harry J Mathis a Court Appointed Process Server, See
5 Docket No E4 the Defendant FleetBoston Financial failed to file its answer to the
6 Summons and Complaint and became in default on January 11th, 2005

7 There has been fifteen (15) days having elapsed from the date of this default
8 and the default not having been opened as a matter of right or by an order of this
9 Court and hence the Plaintiffs are clearly entitled to a judgment by default against the
10 Defendant as a matter of law The Plaintiffs avers that there are no just reasons for
11 delay of the entry of this final judgment and therefore enters final judgment for the
12 Plaintiffs' as to all claims pursuant to O C G A § 9-11-54(b)

11 **II. DISCUSSION**

12 There is no dispute that Defendant FleetBoston is a foreign corporation
13 withdrawn from doing business in this State pursuant to O C G A § 14-2-1520(b)
14 See, (Plaintiffs' Complaint Exhibit "A") and that proper service of process was made
15 on the Defendant by a Court Appointed Process Server by serving the Georgia
16 Secretary of State pursuant to O C G A § 14-2-1520(c) See, Return of Service at
17 Docket No E4 Defendant failed to file its answer to the Summons and Complaint
18 and became in default on January 11th, 2005 The Plaintiffs having filed their joint
19 Motion for Default and Summary Judgment on the issue of Damages, such motion
20 can be heard by the Court Therefore, since Defendant is in default liability is
21 establish by the operation of law See, O C G A § 9-11-55(a)

22 **III. ARGUMENT AND CITATION OF AUTHORITY**

23 The only issue that remain in this civil action are the issue of damages With
24 the consent of the Plaintiffs, the Court should entertain our joint Motion for Default
25 Judgment and Summary Judgment on the issue of damages Defendant has legally
waived all further notices in this action pursuant to O C G A § 9-11-5(a) Defendant
is not entitled to any notice of the final hearing on the Plaintiffs' joint motion

There has been a long line of cases rendered by our Georgia Supreme Court that holds that the failure of a Defendant to file pleadings in an action is deemed a waiver by that Defendant of all further notices to the Defendant in the action. This includes all notices of time and place of trial and the issuing of any final decree in the action. See, Harris v. Harris, 258 Ga. 496, 371 SE2d 399 (1988), Hardwick v. Hardwick, 245 Ga. 570, 266 SE2d 184 (1980), Brooks v. Brooks, 242 Ga. 444, 249 SE2d 244 (1978), Gibson v. Gibson, 234 Ga. 528, 216 SE2d 825 (1975).

Thus, this waiver of further notices of a hearing and the time and place of trial provided by **O.C.G.A. § 9-11-5(a)** would control over any conflicting Court Rules. See, *Hulsey Pool Co. v. Troutman*, 167 Ga. App. 192, 306 SE2d 83 (1983).

Therefore, the Defendant in this action has waived all notices of the entry of this final judgment as a matter of law

(a) DEFENDANT FLEETBOSTON'S ADMISSIONS

When the Plaintiffs served the Defendant with their Complaint for Damages they also served the Defendant with a copy of "Plaintiffs' Request for Admissions " See, Docket No E4 Defendant also failed to answer the Plaintiffs' request for admissions in this action See, Docket No E3 Under O C G A § 9-11-36(a) all matters which are not denied or objected to by a Defendant shall be deemed admitted if not denied by a Defendant within the time permitted for answering a request for admissions Because Defendant FleetBoston did not answer, object or deny the Plaintiffs' request for admissions, the Defendant FleetBoston therefore made the following judicial admissions to wit

"2 The Defendant FLEETBOSTON FINANCIAL CORP., admits that it has committed all acts stated in the Plaintiffs' Complaint and that all exhibits attached thereto are also admitted as true "

"4 The Defendant FLEETBOSTON FINANCIAL CORP., admits to the Court or the Jury that the Plaintiffs are entitled to statutory property damages in the Complaint not less than the amount of **\$75,507,000.00** [Seventy-five Million Five Hundred and Seven Thousand Dollars] and further waives all other defects and objections to the contrary in this civil action."

1
2 "5 The Defendant FLEETBOSTION FINANCIAL
3 CORP , admits to the Court or the Jury that the Plaintiffs are
4 entitled to punitive damages of not less than the amount of
5 **\$95,000,000.00** [Ninety-five Million Dollars] and further
6 waives all other defects and objections to the contrary in this
7 civil action "

8
9 "6 The Defendant FLEETBOSTION FINANCIAL
10 CORP , admits to the Court or the Jury that Plaintiff is
11 entitled to pre interest judgment from June 4th, 1994 until the
12 date final judgment is entered and further waives all other
13 defects and objections to the contrary in this civil action "

14
15 "8 The Defendant FLEETBOSTION FINANCIAL
16 CORP , admits that the Plaintiffs' Complaint for damages
17 states a legal claim to which relief can be granted by the
18 Court and that a motion to dismiss Plaintiffs' Complaint or to
19 set aside any final judgment under O C G A § 9-11-60(d)
20 based upon such grounds would be without merit by the
21 Defendant Therefore, the Complaint states a legal claim for
22 relief and is deemed true and correct without any objections
23 made by the Defendant "

24
25 "9 The Defendant FLEETBOSTION FINANCIAL
26 CORP , admits that there are no genuine issues as to any
27 material facts as to liability and damages and that the
28 Plaintiffs are entitled judgment to a Summary Judgment on
29 the issue of liability and damages as a matter of law and
30 waives any defects or objections to the contrary "

31
32 "11 The Defendant FLEETBOSTION FINANCIAL
33 CORP , admits that any amendments or withdrawal of these
34 admissions by the Court or by the Defendant concerning the
35 matters admitted would cause the Plaintiffs an undue burden
36 and would be prejudice to them and the case will not be best
37 served "

38
39 These un-withdrawn admissions made by the Defendant FleetBoston
40 Financial Corporation are deemed judicial admissions and cannot be overlooked or
41 set aside by this Court See, O C G A § 9-11-36(b)

42 The statute reads in part that

1 “(b) Effect of admission. Any matter admitted
2 under this Code Section is conclusively established
3 unless the court, on motion, permits withdrawal or
4 amendment of the admission.”

5 (b) TRIAL COURT’S DISCRETION

6 This Court will only have discretion under O.C.G.A. § 9-11-36(b) when a party
7 moves to determine the sufficiency of the answers or objections filed in response to a
8 request for admissions. See, Mountain View Enters, Inc. v. Diversified Systems,
9 133 Ga. App. 249, 211 SE2d 186 (1974). Defendant should have moved to amend
10 or withdraw its admissions in order for this Court to use its discretion. However,
11 without such a timely motion made by the Defendant FleetBoston to withdraw or
12 amend its admissions this Court as a matter of law is without discretion, authority or
13 jurisdiction to set aside or amend Defendant’s admissions on its own motion

14 (c) GEORGIA’S SUPREME COURT RULE ON ADMISSION

15 This Court is also bound by the holding made by our Georgia Supreme Court
16 in G.H. Bass & Co. v. Fulton County Bd. Of Tax Assessors, 268 Ga. 327, 486
17 SE2d 810 (1997) holding that a Defendant’s un-withdrawn admissions are deemed
18 admitted when not denied. The Georgia Supreme Court held in part that

19 “The [Defendant] did not move the trial court to
20 allow the withdrawal or amendment of its admissions
21 either before or after [the Plaintiffs] raised the legal
22 effect of the [Defendant’s] failure to respond to its
23 requests and did not offer any justification for its failure
24 to respond which would have authorized the trial court
25 to exercise its discretion under O.C.G.A. § 9-11-36(b) to
 relieve the [Defendant] from the consequence of its
 admissions. Because the [Defendant] did not avail itself
 of any of the variety of the responses available under
 O.C.G.A. § 9-11-36 and chose not to seek the liberal
 remedies afforded to parties under the statute to avoid
 the consequences of a failure to respond, we hold that
 the subject matter of [Plaintiffs’] requests for admission
 stood admitted.”

26 “The language in O.C.G.A. § 9-11-36(a) is clear,
27 unambiguous, and unequivocal and means just what it
28 says. One must comply strictly and literally with the

1 terms of the statute upon the peril of having his
2 response construed to be an admission.”

3 “While we recognize that the result on the
4 [Defendant] may be criticized as harsh or draconian, our
5 holding benefits both bench and bar in that it promotes
6 constancy and stability in the law by clarifying that the
7 plain language of a civil practice statute will be applied
8 consistently to all parties; hence, all practitioners will be
9 able to govern their behavior accordingly.”

10 “Because the admissions were not withdrawn or
11 amended, the Court of Appeals erred by holding that the
12 [Defendant’s] failure to respond was a matter of no
13 consequence.”

14 “**Judgment reversed.**”

15 With emphases supplied and citations omitted Thus our Georgia Court of
16 Appeals has echoed the Georgia Supreme Court holding in its opinions in Mays v.
17 Ed Voyles Chrysler-Plymouth, Inc., 255 Ga. App 357, 565 SE2d 515 (2002),
18 Solis v. Lamb, 244 Ga. App. 8, 534 SE2d 582 (2000) The Georgia Court of
19 Appeals has ruled in Mays v. Ed Voyles Chrysler-Plymouth, Inc., Supra, that

20 “A matter admitted in response to requests for
21 admission under O.C.G.A. § 9-11-36 is conclusively
22 established unless the court, on motion, permits
23 withdrawal or amendment of the admission.... Such a
24 solemn admission in judicio is conclusive as a matter of
25 law on the matter stated and cannot be contradicted by
other evidence unless it is withdrawn or amended on
formal motion ”

26 Because Defendant has already admitted that the Plaintiffs are entitled to not
27 less than \$75,507 000 00 in property damages, \$95,000,000 00 in punitive damages
28 and pre interest judgment from June 4th, 1994 until the date final judgment is entered
29 in this civil action There are no genuine issue as to any material fact concerning the
30 amount of damages and that the Plaintiffs are entitled to Summary Judgment on the
31 issue of damages as a matter of law See, Mays v. Ed Voyles Chrysler-Plymouth,
32 Inc., 255 Ga. App. 357, 565 SE2d 515 (2002) A final judgment should be granted to
33 the Plaintiffs based upon Defendant’s judicial admissions along

IV. CONCLUSIONS

For the reasons stated herein the Plaintiffs conclude that they made proper service of process on Defendant FleetBoston Financial Corporation with the Summons, Complaint and Request for Admissions by serving the Georgia Secretary of State pursuant to **O.C.G.A. § 14-2-1520(c)** See, Docket No E4

They further conclude that the Defendant is in default as a matter of law and that Defendant FleetBoston has legally waived all further notices in this action pursuant to **O.C.G.A. § 9-11-5(a)**. This also include notice of time and place of trial and the issuing of any final judgment and decree in this civil action.

They further conclude that the admissions made by the Defendant FleetBoston Financial Corporation as to the amount of damages are deemed judicial admissions and cannot be overlooked by this Court and is therefore binding on this Court. See, O.C.G.A. § 9-11-36(b). Because of Defendant's solemn admissions in judicio are binding, they are conclusive on the issue of damages and cannot be contradicted by other evidence unless it is withdrawn or amended on formal motion.

Therefore, the Plaintiffs are entitled to relief sought and that this Court has jurisdiction to grant the Plaintiffs' request for relief concerning their joint Motion for Default Judgment and Summary Judgment on the issue of damages in this civil action. See, Georgia Constitution, Article VI Section IV Paragraph I, O.C.G.A. § 9-11-55(a) and O.C.G.A. § 9-11-56(a).

WHEREFORE, The Plaintiffs hereby prays and demands that this Court enter a final Default judgment and Summary judgment on the issue of damages because the Plaintiffs are entitled to such relief as a matter of law. The Plaintiffs request that the Court further grant the following relief to wit:

1 That a final judgment be entered in favor of the Plaintiffs Tony L Ware, CEO and TL Ware Bottling Company, Inc. against the Defendant FleetBoston Financial Corporation in the amount of \$75,507,000 00 in property damages which damages are to be tripled pursuant to O C G A § 16-14-6(c) the (Georgia RICO Act) and 18 U S C § 1964(c) the (Federal RICO Act) resulting in a total amount of **\$226,521,000.00** in favor of the Plaintiffs against Defendant FleetBoston Financial Corporation

1 2 That the Plaintiffs be awarded punitive damages
2 against the Defendant for its illegal actions, frauds, willful
3 misconduct, wanton, illegal thefts and RICO violations in the
4 amount of \$95,000,000.00 in punitive damages which
5 damages are to be tripled pursuant to O C G A § 16-14-6(c)
6 the Georgia RICO Act and 18 U S C § 1964(c) the Federal
7 RICO Act resulting in a total amount of **\$285,000,000.00** in
8 favor of the Plaintiffs against Defendant FleetBoston

9 3 That the Plaintiffs be awarded pre judgment interest
10 against the Defendant FleetBoston Financial Corporation
11 concerning the Plaintiffs' property damage claims from June
12 4th, 1994 upon entry of such final judgment in the amount of
13 **\$410,746,265.24** pursuant to O C G A § 51-12-14(c) See,
14 Affidavit at Docket No E6 Thus, the Plaintiffs should have a
15 total final judgment against Defendant FleetBoston Financial
16 Corporation in the principle amount of **\$511,521,000.00** and
17 pre interest in the amount of **\$410,746,265.24**.

18 4 That the Defendant pay any and all post judgment
19 interest that accrues on this final judgment after the entry of
20 this final judgment pursuant to O C G A § 7-4-12.

21 5 That the Clerk of this Court be order to issue a Writ
22 of Execution (Fl Fa) in the principle amount of
23 **\$511,521,000.00** with interest in the amount of
24 **\$410,746,265.24** and the Court cost of this action Upon
25 the Clerk issuing the Writ of Execution (Fl Fa), Defendant
 FleetBoston Financial Corporation formerly known as
 BankBoston Corporation shall immediately pay and satisfy the
 final judgment of this Court as stated in such Writ of Execution
 (Fl Fa) and upon Defendant receiving a certified copy of this
 final judgment and the Writ of Execution

26 6 That unless the Defendant show good cause to this
27 Court why it cannot pay or satisfy the final judgment of this
28 Court with pre judgment interest, or if the Defendant fails or
29 refuses to make payment of the final judgment including pre
30 judgment interest to the Plaintiffs within 7 days upon receipt of
31 a copy its order, then the Court adjudges the Defendant in civil
32 contempt of this Court See, Griggers v. Bryant, 239 Ga.
33 244, 236 SE2d 599 (1977), Wagner v. Commercial, Inc., 203
34 Ga. 1, 45 SE2d 205 (1945)

1 7 That the Court orders that Defendant shall be subject
2 to pay the Plaintiffs in addition to the final judgment and post
3 judgment interest, a civil penalty of \$25,000.00 per day until
4 the Defendant purges itself of such contempt by complying
5 with the terms of this final judgment. See, *In re Harvey*, 219
6 Ga. App. 76, 464 SE2d 34 (1995). This civil penalty will only
7 apply if the Defendant fails to comply with the terms of this
8 order within (7) days upon receiving notice of this order by the
9 Court or by the Plaintiffs. The Defendant, its subsidiaries that
10 are operating in this State, their officers and agents will be
11 subject to further civil and criminal penalties and a writ of
12 injunction that will enjoin them from operating in this State until
13 Defendant has complied with the terms of this final judgment

14 8 That the Sheriffs of this State and their lawful
15 Deputies be ordered to take all actions needed to seize all
16 monies, property and assets which is not exempt by law held
17 by any persons, corporations, partnerships, banks or holding
18 companies held on behalf of the Defendant or that is in the
19 possession of the Defendant located within the jurisdiction of
20 this State

21 9 That the Defendant be required to post supersede
22 bonds in the amount of **\$511,521,000.00** representing the
23 principal and **\$410,746,265.24** representing the pre
24 judgment interest before the Defendant can file any pleadings,
25 motions or appeals in this action. The Clerk of this Court is
hereby directed not to file any motions, appeal or any other
documents into this Court on behalf of the Defendant except
an affidavit by the Defendant's CEO explaining why the
Defendant cannot post the supersede bonds stated in this
decree. Nor shall the Clerk of this Court set any hearings on
any other matter before any other Judge of this Court until said
Defendant has posted a total of **\$922,267,265.24** in
supersede bonds with the Clerk of this Court

1 10 That the Defendant, its officers, agents, its servants,
2 its assigns and its successors (such as Bank of America) or
3 any other person, corporation, insurance company, bank or
4 partnership acting under the authority of the Defendant
5 FleetBoston Financial Corporation are hereby permanently
6 enjoined and restrained from the following

7 (a) That the Defendant be hereby permanently enjoined
8 and restrained from assisting or aid and aiding its subsidiaries,

1 its officers, agents and servants in performing any illegal acts
2 averred by the Plaintiffs and deemed by the Court to be illegal
3 and a fraud against the Plaintiffs and other consumers in the
4 State of Georgia,

5 (b) That the Defendant be hereby permanently enjoined
6 and restrained from operating in this State without a Certificate
7 of Authority from the Georgia Secretary of State,

8 (c) That the Defendant, its officers, agents and its
9 attorneys be permanently enjoined and restrained from filing
10 any motions, pleadings or appeals for the purpose of delaying
11 any rights adjudicated by this Court in favor of the Plaintiffs in
12 this civil action. Nor shall the Defendant or its attorneys acting
13 on behalf of the Defendant file any motions, pleadings or
14 appeals for the purpose of harassing the Plaintiffs of any rights
adjudicated by the Court and

15 (d) That the Defendant its officers, agents and its
16 attorneys be permanently enjoined and restrained from
17 harassing the Plaintiffs in any discovery or post judgment
18 discovery matters by asking questions in a matter which is
19 deemed irrelevant to the case so adjudicated by this Court or
20 that such questions has no legal value to the Plaintiffs' claims
21 at issue. Nor shall Defendant's attorneys file any motions or
22 pleadings in any other Court having jurisdiction on matters
23 already admitted to by the Defendant and matters adjudicated
24 by this Court in this civil action .

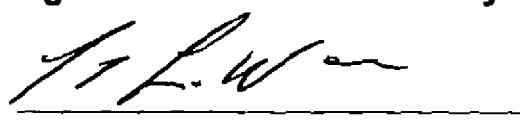
25 This 27th, day of June, 2005.

16 Agreed and Consented to By:

17 

18 Michael R. Johnson, Sr.
19 Attorney for the Plaintiff
20 Georgia Bar No. 395056
21 Johnson & Associates, P. C.
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Agreed and Consented to By:



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